D.T.E. 98-118

Application of Boston Edison Company, an electric company under G.L. c. 164, § 1, for Approval of Rate Reduction Bonds under the terms of the Electric Restructuring Act, St. 1997, c. 164.

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I. INTRODUCTION

On December 3, 1998, Boston Edison Company ("Boston Edison" or "Company") filed an application for approval of rate reduction bonds ("RRBs") pursuant to G.L. c. 164, § 1H(b). Boston Edison proposes to securitize approximately $805 million of transition costs, the majority of which are associated with the sale of its Pilgrim Nuclear Power Station and related assets ("Pilgrim"), to Entergy Nuclear Generation Company ("Entergy"). This application was docketed as D.T.E. 98-118. Boston Edison also submitted a proposed financing order (Exh. BE-1) for issuance by the Department.

Pursuant to notice duly published, public hearings were held in Plymouth, Massachusetts on December 21, 1998, and January 5, 1999, and at the Department's offices in Boston on December 22, 1998. The Attorney General of the Commonwealth ("Attorney General") filed a notice of intervention pursuant to G.L. c. 12, § 11E. The Department allowed the petitions to intervene of the Commonwealth of Massachusetts Division of Energy Resources ("DOER"), Entergy, Locals 369 and 387 of the Utility Workers Union of America - American Federation of Labor/Congress of Industrial Organizations (UWUA, AFL-CIO) ("Locals 369 and 387"), and the Massachusetts Development Finance Agency and Massachusetts Health and Educational Facilities Authority (collectively, the "Agencies"). The petition of the town of Plymouth ("Plymouth") to intervene was allowed, but limited to the issue of whether a tax agreement between Boston Edison and Plymouth had been executed pursuant to the provisions of G.L. c. 59, § 38(H)(c). The petitions to intervene of Commonwealth Electric Company ("Commonwealth Electric"), Montaup Electric Company ("Montaup") and Eastern Edison Company ("Eastern") were denied, but each was allowed limited participant status. Western Massachusetts Electric Company ("WMECo") was also allowed limited participant status.

The Department granted a motion to consolidate Boston Edison's petition for approval of the Pilgrim divestiture transaction, D.T.E. 98-119, and Commonwealth Electric's petition for approval of the termination and buyout of its Pilgrim-related purchase power agreement ("PPA"), D.T.E. 98-126, and denied a motion to consolidate D.T.E. 98-118 with D.T.E. 98-119/126. The Department coordinated hearings for the purposes of establishing an evidentiary record common to both proceedings (Tr. 1, at 5).

Evidentiary hearings were held on January 20, 21, 22, 25, and 26, and February 12, 1999. In support of its petition, Boston Edison presented the testimony of Geoffrey Lubbock, the director of generation divestiture for Boston Edison; Emilie O'Neil, the manager of corporate finance for Boston Edison; and Elliot Alchek, the managing director and co-head of the asset-backed securities group at Goldman, Sachs & Co. The Attorney General presented the testimony of Timothy Newhard, a financial analyst with the Regulated Industries Division of the Office of the Attorney General. Briefs were filed by Boston Edison, Commonwealth Electric, DOER, the Agencies, Entergy, Plymouth, and the Attorney General. Reply briefs were filed by Boston Edison, Entergy, the Attorney General, the Agencies and Commonwealth Electric. The record consists of 346 exhibits and the responses to 75 record requests.

II. STANDARD OF REVIEW

The Legislature has vested broad authority in the Department to regulate the ownership and operation of electric utilities in the Commonwealth. See, e.g., G.L. c. 164, § 76. The Department's authority was most recently amended by the Acts of 1997, c. 164 (the "Restructuring Act" or "Act"). Boston Edison Company, D.P.U./D.T.E. 96-23, at 9 (1998). The Act authorizes the Department to issue a financing order allowing a company to securitize its reimbursable transition costs amounts (both debt and equity)

through the issuance of electric RRBs. A financing order may be issued by the Department to facilitate the provision, recovery, financing or refinancing of transition costs. G.L. c. 164, § 1H(b)(1).

Prior to issuing a financing order, the Department must have approved an electric company's restructuring plan. G.L. c. 164, § 1(A)(a). The restructuring plan must include, among other things, a company's strategy to mitigate the transition costs it seeks to recover through a non-bypassable transition charge. In order to issue a financing order, the Department must find that a company has demonstrated that the issuance of electric RRBs to refinance reimbursable transition costs will reduce the rates that a company's customers would have paid without the issuance of electric RRBs, and that the reduction in rates to customers equals the savings obtained by the company. G.L. c. 164, § 1(H)(b)(2). The company must establish, and the Department must approve, an order of preference for use of bond proceeds such that transition costs having the greatest impact on customer rates will be the first to be reduced by those proceeds. G.L. c. 164, § 1G(d)(4).

In order to approve an application for a financing order, the Department must also be satisfied that a company has (1) fully mitigated the related transition costs (including, but not limited to, as applicable, divestiture of its non-nuclear generation assets, renegotiation of existing power purchase contracts, and the valuation of assets of the company); and (2) obtained written commitments that purchasers of divested assets will offer employment to any affected non-managerial employees who were employed at any time during the three-month period prior to the divestiture, at levels of wages and overall compensation no lower than the employees' prior levels. G.L. c. 164, § 1G(d)(4). In addition, the Department cannot approve a company's application for securitization if the company owns, in whole or in part as of July 1, 1997, a nuclear-powered generation facility located in the Commonwealth that exceeds 250 megawatts in size, unless the company has executed a tax agreement with the plant's host community. G.L. c. 59, § 38H(c).

III. BOSTON EDISON'S SECURITIZATION PROPOSAL

A. Introduction

Securitization is a method for a company to refinance transition costs. The Restructuring Act authorizes an electric company to securitize its transition costs by issuing RRBs to investors that will be repaid through a portion of the transition charge. G.L. c. 164, § 1H. The RRBs, if assigned a high credit rating, will have an interest rate lower than the carrying charge paid by ratepayers as part of the transition charge, thereby generating savings to ratepayers.

Boston Edison ratepayers currently pay a carrying charge of 10.88 percent for all unrecovered transition costs (Exh. BE-1 ("Settlement Agreement") at Att. 3, Sch.1, at 14). Boston Edison proposes to securitize approximately $805 million of transition costs

(and related costs of issuance) by issuing RRBs (Boston Edison Reply Brief at 21-22). The proposed estimated principal amount of the RRBs is composed of (1) approximately $691 million representing the net present value of the fixed component of Boston Edison's transition charge after all Pilgrim divestiture related adjustments have been made, (2) $68 million for the L'Energia contract buyout (Boston Edison Company, D.T.E. 99–16, now pending before the Department), (3) approximately $36 million in transaction costs, and (4) $10 million for delivery requirements related to materials contracts with General Electric (Boston Edison Reply Brief at 22). The amount to be securitized is discussed in section IV, below.

After the enactment of the Restructuring Act, the Department, the Agencies, the Massachusetts-based electric companies and other interested parties, such as investment bankers and statistical rating organizations ("rating organizations"), developed a structure for an RRB transaction (Boston Edison Brief at 3-4). As part of its application, Boston Edison submitted a proposed financing order prepared in consultation with the Agencies, Lehman Brothers, and Goldman, Sachs & Co. ("the Underwriters"), the Commonwealth of Massachusetts Executive Office for Administration and Finance, and three rating organizations (Boston Edison Brief at 4, citing RR-DTE-29).

Boston Edison seeks to recover through the RRBs, a portion of its transition costs, together with the transaction costs of issuing RRBs, ongoing transaction costs, and the costs of providing credit enhancement. Boston Edison also seeks an exemption from the competitive bidding requirements of G.L. c. 164, § 15 in connection with the sale of the RRBs, and from the par value debt issuance requirements of G.L. c. 164, § 15A. The request for these exemptions is discussed below. If approved by the Department, the amounts Boston Edison seeks to recover will constitute reimbursable transition costs amounts and will be financed through the issuance of RRBs, and a portion of Boston Edison's transition charge, the reimbursable transition cost ("RTC") charge, will be used to repay these amounts. The RRBs will be backed by collateral, including the right to all collections or proceeds arising from (1) recoverable transition costs, (2) RTC charge, and (3) adjustments to the RTC charge (collectively, the "Transition Property") as set forth in the financing order (Boston Edison Brief at 65).

Boston Edison will sell the Transition Property to a special purpose entity ("SPE") (id.). The SPE will be a bankruptcy-remote entity owned and initially capitalized by Boston Edison (id.). To raise the funds to buy the Transition Property from Boston Edison, the SPE will issue and sell SPE debt securities to a special purpose trust established by the Agencies (id.). This special purpose trust will then issue RRBs, the proceeds of which will be remitted to the SPE and ultimately to Boston Edison (id.). Once a financing order is issued, neither the Department nor the Commonwealth of Massachusetts (pursuant to G.L. c. 164, § 1H(b)(3)) can alter or revoke the transfer of Transition Property, or the RTC Charges.

In order to maximize the savings obtainable from securitization, the RRBs must achieve the highest possible rating. The RRBs will receive ratings from national rating organizations. The rating of debt instruments backed by regulatory assets such as the RRBs is not tied to the rating of the distribution company; instead, it is based on an analysis of the underlying collateral and the specific transaction structure. A credit rating analysis takes into account elements that are customary in an asset securitization and combines them with a detailed analysis of the regulatory and legal foundation of the asset account and the collection mechanisms. Rating organizations will consider the following characteristics of RRBs (1) bankruptcy-remoteness of seller, (2) predictability and nonbypassability of the RTC charge, (3) standards governing a third party supplier ("TPS"), (4) credit enhancement, and (5) the Commonwealth's assurance of irrevocability; and other statutory safeguards (Exh. BE-2, at 4).

The Restructuring Act establishes the Agencies as a financing entity for RRBs. In this capacity, the goal of the Agencies is to protect the interests of Boston Edison's ratepayers by (1) ensuring the lowest all-in cost pricing reasonably obtainable for RRBs, (2) streamlining the administrative processes and thereby minimizing the costs of issuing the RRBs, and (3) providing consulting services to the Department (G.L. c. 164, § 1H(b)(2)). The Agencies also have a number of other responsibilities under the Act, including the issuance of the RRBs. The Agencies also will approve the final terms and conditions of the RRBs, including structure, pricing, credit enhancement, relevant issuance costs and manner of sale. In addition, in order to minimize the all-in costs of the RRBs and associated administrative expenses, the Agencies will coordinate with Boston Edison on the marketing of the RRBs, the procurement of bond trustees and related services, and the selection of rating organizations and the underwriting syndicate (Agencies' Brief at 3).

B. Positions of the Parties

1. Boston Edison

Boston Edison argues that the structure of the RRB transaction, as described above, satisfies all statutory and rating organizations requirements, as well as the requirements of the Agencies (Boston Edison Brief at 61, 93). Boston Edison argues that the proposed financing order complies with the relevant provisions of the Restructuring Act, as well as other provisions governing the operation of electric companies (id. at 62, citing G.L. c. 164, §§ 1G and 1H). Finally, Boston Edison argues that it has drafted the proposed financing order to obtain the "lowest pricing for the RRBs and the most efficient cost structure for the transaction as a whole" (id. at 62). For these reasons, Boston Edison argues that the issuance of RRBs is in the public interest and should be approved by the Department (id. at 93).

2. Attorney General

The Attorney General does not disagree about whether the issuance of RRBs by Boston Edison is in the public interest and should be approved by the Department. However, the Attorney General urges that the Department's approval of Boston Edison's application should incorporate certain changes to the financing order. The Attorney General's proposed changes, together with findings thereon, are discussed below.

3. The Agencies

The Agencies urge the Department to approve the proposed financing order and argue that, in general, it incorporates all of the characteristics considered significant by rating organizations in establishing the highest possible credit rating of the RRBs (Agencies Brief at 4). However, the Agencies suggest some changes to the proposed financing order which are discussed in section V, below.

4. Plymouth

The town of Plymouth argues that Boston Edison cannot securitize unless and until Boston Edison has executed an agreement to make payments in addition to and payments in lieu of taxes to Pilgrim's host community, the town of Plymouth. The status of the host community tax agreement is discussed below.

C. Analysis and Findings

1. Introduction

The Act requires the Department to find that specific conditions have been met in order for a company to be eligible to issue electric RRBs. Consistent with the standard of review, the Department's analysis of Boston Edison's proposed securitization transaction will focus on (1) mitigation of transition costs, (2) savings to ratepayers, (3) employee commitments, (4) order of preference for use of proceeds, and (5) host community tax agreement.

a. Mitigation of Transition Costs

An electric company seeking to recover transition costs must mitigate such costs. G.L. c. 164, § 1G(d)(1). Before approving the recovery of transition costs through the transition charge, the Department must find that a company has taken all reasonable steps to mitigate to the maximum extent possible, the total amount of transition costs that will be recovered from ratepayers. G.L. c. 164, § 1G(d)(1).

The Act requires a company to have an approved restructuring plan that establishes its overall mitigation strategy and to divest it non-nuclear generation assets in order to be able to securitize its reimbursable transition costs. G.L. c. 164, §§ 1A(a), 1(G)(d)(3). Boston Edison filed a restructuring Settlement Agreement with the Department on July 8, 1997, which contained a detailed accounting of Boston Edison's transition costs and

mitigation strategy (Settlement Agreement at Att. 3). The Department approved the mitigation strategy proposed in the Settlement Agreement and authorized Boston Edison to recover its associated transition costs. Boston Edison Company, D.P.U./D.T.E. 96-23, at 46-47 (1998).

The Settlement Agreement required Boston Edison to divest its non-nuclear generation business, to endeavor to sell, assign or otherwise dispose of its PPAs, and to file a market valuation plan for Pilgrim on or before January 1, 1999. In May, 1998, Boston Edison divested its non-nuclear generation assets, as required by the Settlement Agreement. With respect to PPAs, in Boston Edison Company, D.T.E. 98-119/126, at 49 (1999), the Department found that Boston Edison "has made and continues to make a reasonable attempt to mitigate the costs related to the municipal contracts through attempted renegotiations of the PPAs and through seeking recovery through its ongoing filing at FERC." In addition, in a letter order issued on February 19, 1999, in D.T.E. 98–62, the Department found that Boston Edison made a good faith effort to renegotiate its above-market PPAs within the meaning of G.L. c. 164, § 1G(d)(2)(i).

Boston Edison has received Department approval to divest Pilgrim pursuant to D.T.E. 98–119/126 (1999), although such divestiture is not required by either the Act or the Settlement Agreement. In approving the proposed sale, the Department found that the divestiture transaction provided both direct and indirect benefits to Boston Edison ratepayers through the mitigation of Pilgrim-related transition costs. Further, the Department found that the divestiture of Pilgrim is consistent with the mitigation requirements of the Act. D.T.E. 98-119/126, at 24 (1999).

Boston Edison contends that, because the Department has approved or will approve the recovery of all transition costs (including the renegotiated PPAs) that the Company seeks to securitize in the RRB transaction, it has mitigated its transition costs (Boston Edison Brief at 94, citing D.P.U./D.T.E. 96-23, at 73; D.T.E. 97-113 (non-nuclear generating asset divestiture approval); D.T.E. 98-119 (Pilgrim divestiture); and D.T.E. 99-16 (L'Energia buyout)). The Department approved recovery of transition costs through Boston Edison's transition charge in (1) the Settlement Agreement approved by the Department in D.T.E. 96–23, (2) the approval of Boston Edison's non-nuclear generation asset divestiture in D.P.U./D.T.E. 97-113, and (3) the approval of Boston Edison's Pilgrim divestiture in D.T.E. 98-119/126. In each case, the Department found that Boston Edison had taken all reasonable steps to mitigate, to the maximum extent possible, such transition costs. G.L. c. 164, § 1G(d)(1). Accordingly, the Department finds that Boston Edison has met its obligation to mitigate the transition costs it seeks to securitize as approved in D.P.U./D.T.E. 96-23, D.P.U./D.T.E. 97-113 and D.T.E. 98-119/126 for the purposes of G.L. c. 164, § 1G(d)(4)(i). The Department has not yet issued a decision regarding the L'Energia contract buyout; therefore, the Department makes no finding regarding mitigation related to the L'Energia contract buyout. The exact costs, including the L'Energia buyout, are discussed in Section IV, below.

b. Savings to Ratepayers

Before approving a financing order, the Department must find that savings to ratepayers will result from securitization and that all such savings derived from securitization will inure to the benefit of ratepayers. G.L. c. 164, §§ 1G(d)(4)(ii)-(iii). Under the Settlement Agreement, Boston Edison's ratepayers pay a carrying charge of 10.88 percent for all unrecovered transition costs (Settlement Agreement at Att. 3, Sch. 1, at 14). Boston Edison argues that its ratepayers will benefit from securitization if the effective all-in cost of the approved transition costs is lower than the current 10.88 percent carrying charge. Based on current market conditions, Boston Edison anticipates that the carrying charge rate of 10.88 percent will be reduced to approximately 7.50 percent through securitization (Tr. 3, at 283-284). Boston Edison estimates that the total net present value of savings to its ratepayers, as a result of securitization, will be $89 million (Boston Edison Brief at 95).

Although no party disputed the conclusion that securitization will yield ratepayer savings as long as the interest rate on the RRBs is less than 10.88 percent, the Attorney General cautions that "the bonds must, of course, result in savings" and the Agencies must "ensure the lowest all-in cost pricing reasonably obtainable on the RRBs" (Attorney General Reply Brief at 9). The Agencies support approval of Boston Edison's request to securitize its transition costs stating that, in their capacity as the "financing entity," their goal is to protect the interests of Boston Edison's ratepayers by ensuring the lowest all-in cost pricing reasonably obtainable for the RRBs (Agencies Brief at 2). The Agencies state that in approving specified transaction costs, they would seek to avoid unnecessary or excessive costs in order to obtain maximum ratepayer savings, while at the same time obtaining the highest possible bond ratings (id. at 13).

Neither Boston Edison nor the Agencies, as the financing entity, will authorize a bond issuance unless there will be demonstrated ratepayer savings (Exh. BE-4, at 14-15; Agencies Brief at 2). Boston Edison states that it will not issue RRBs unless the all-in cost of issuance of the RRBs results in a carrying charge of less than the current carrying charge of 10.88 percent (Exh. BE-4, at 14-19). Because securitizing at an all-in cost of less than 10.88 percent will result in Boston Edison's ratepayers paying a transition charge that is lower than what they would have paid without securitization, the Department finds that savings to ratepayers will result from securitization. Therefore, Boston Edison should proceed with securitization and ensure that all such savings will inure to the benefit of ratepayers, in accordance with G.L. c. 164, §§ 1G(d)(4)(ii)-(iii). While Boston Edison anticipates that securitization will result in savings to ratepayers of approximately $89 million, the Department notes that the amount of ratepayer savings is predicated on market conditions at the time of bond issuance. Upon issuance, a financing order is irrevocable and may not be altered by the Department. G.L. c. 164, § 1H(b)(3). The Department must, therefore, rely on the Agencies, as the financing entity, to ensure that the maximum possible level of ratepayer savings is obtained.

c. Employee Commitments

Before the Department may approve a financing order, the Department must be satisfied that Boston Edison has obtained a written commitment from Entergy which provides that Entergy, as the purchaser of Pilgrim, will offer employment to any affected non-managerial employees who were employed at any time during the three-month period prior to the divestiture, at levels of wages and overall compensation no lower than the employees' prior levels. G.L. c. 164, § 1G (d)(4)(iv).

The Purchase and Sale Agreement between Boston Edison and Entergy contains a written commitment stating that Entergy, as the buyer, "is required to offer employment to those employees of [Boston Edison] who were employed in non-managerial positions and whose employment relates primarily to providing services for operation of [Pilgrim] at any time during the three-month period prior to the closing date, at levels of wages and overall compensation not lower than the employees' prior levels, for a period of six months beginning at the closing date" (Exh. BE-5A, Tab 1, at § 5.7(a)). Accordingly, the Department finds that Boston Edison has satisfied the requirements of G.L. c. 164, § 1(g)(d)(4)(iv) relating to employee commitments.

d. Order of Preference for Use of Proceeds

In its application, Boston Edison states that it expects to use the proceeds from the sale of transition property, net of transaction costs, for the following purposes: (1) to return the securitized portion of the Pilgrim and non-nuclear unrecovered plant balances and related regulatory assets; (2) to fund the unrecovered prefunded balance of the securitized portion of the decommissioning fund and any additional transition costs arising in connection with the Pilgrim divestiture; and (3) to provide any credit enhancement required for the RRBs (Exh. BE-4, at 12). Before the Department may approve a financing order, Boston Edison must show that it has established an order of preference for use of the RRB proceeds that first reduces transition costs having the greatest effect on customer rates. G.L. c. 164, § 1G(d)(4)(v). Boston Edison states that the order of preference for the use of RRB proceeds meets the requirements of the Act because all of its transition costs have the same carrying charge of 10.88 percent and, therefore, have the same effect on customer rates (Boston Edison Brief at 97). Because all of Boston Edison's reimbursable transition costs have the same carrying charge, the reduction of any cost has the same customer rate impact. The Department therefore finds that Boston Edison's proposal satisfies the requirements of the Act relative to the order of preference for use of the bond proceeds, and thus complies with G.L. c. 164, § 1G(d)(4)(v).

e. Tax Agreement

The Department cannot approve an electric company's plan to securitize its transition costs without an executed tax agreement if the electric company owns a nuclear-powered generation facility in the Commonwealth that exceeds 250 megawatts and that was owned in whole or in part by said company as of July 1, 1997. G.L. c. 59, § 38H(c). Boston Edison owned Pilgrim (whose output exceeds 250 megawatts) as of July

1, 1997; therefore, Boston Edison must demonstrate to the Department that it has executed an agreement with the town of Plymouth (Pilgrim's host community) to make payments in addition to and payments in lieu of taxes before the Department can approve its securitization plan. G.L. c. 59, § 38H(c).

On March 18, 1999, Boston Edison and the town of Plymouth presented to the Department an executed agreement (Exh. BE-17) which requires Boston Edison to make payments in addition to and payments in lieu of taxes to the town of Plymouth. There are additional requirements that are conditions of the executed agreement. Because Boston Edison has executed an agreement pursuant to G.L. c. 59, § 38H(c), these requirements do not prohibit the Department from approving a plan submitted by Boston Edison to utilize the provisions of securitization pursuant to G.L. c. 164, § 1H.

Therefore, the Department finds that Boston Edison has complied with the requirements of the Restructuring Act relative to executing an agreement to make payments in addition to and payments in lieu of taxes pursuant to G.L. c. 59, § 38H(c). IV. AMOUNTS TO BE SECURITIZED

A. Introduction

After the divestiture of Pilgrim, Boston Edison will credit customers with the sale proceeds after making adjustments for several items, such as materials and supplies, nuclear refueling outage costs, and other costs. D.T.E. 98-119/126, at 40-69. The Company will also reduce the sale proceeds by $466 million for the Decommissioning Trust being transferred to Entergy, the purchaser of Pilgrim, less the amount already paid by ratepayers for decommissioning. D.T.E. 98-119/126, at 69. After providing for these adjustments, Boston Edison estimates that customers will have a liability of $264 million, based on a closing date of March 31, 1999, for the sale. D.T.E. 98-119/126, at 69, n.39. This liability of $264 million results in a Pilgrim residual value credit ("RVC") annualized at $29 million per year (Exh. BE-7, Att. GOL-3, at 2). Subtracting the $29 million annual payments from the $57 million for the non-nuclear units' divestiture annual RVC credit, Boston Edison calculates a net annual RVC of $27 million. D.T.E. 98-119/126, at 69, n.39. Boston Edison estimates that after the implementation of this net RVC, the fixed component of its transition charge will be $692 million, on a net present value basis, assuming a closing date of March 31, 1999 (Exh. BE-7, Att. GOL-3, at 2). Similarly, for closing dates of June 30, 1999, and December 31, 1999, Boston Edison estimates the fixed component of the transition charge will be $653 million and $611 million, respectively (Exh. BE–7, Att. GOL-4, at 2, GOL-5, at 2).

Boston Edison proposes to securitize the following costs: (1) the updated fixed component of its transition charge (approximately $692 million, assuming a March 31, 1999 closing, less the $800,000 balance for the LaGrange Street Property); (2) transaction costs of approximately $36 million; (3) a $10 million delivery requirement related to a materials contract with General Electric; and (4) $68 million for the buyout

of the contract with L'Energia Limited Partnership upon a favorable ruling by the Department in Boston Edison Company, D.T.E. 99-16 (Exh. BE-3, Sch. BE–3B; Boston Edison Reply Brief at 22, n.17). The amounts the Company proposes to securitize total $805 million, and might be increased by any credit enhancement included upon issuance (Boston Edison Reply Brief at 22, n.17).

B. Positions of the Parties

1. Attorney General

The Attorney General argues that Boston Edison is seeking to securitize costs that are not eligible for recovery or have not been fully mitigated (Attorney General Brief at 22). Further, the Attorney General argues that Boston Edison seeks to securitize costs that are not yet sufficiently final to permit any determination that they are eligible for recovery or fully mitigated (id.). The Attorney General recommends that the Department limit the amount to be securitized to those costs that have been shown to be both recoverable and fully mitigated (id.). To this end, the Attorney General recommends that the amount to be securitized be capped at $710 million (id.).

The Attorney General argues that the amount that Boston Edison proposes to securitize includes approximately $50 million of costs that are not transition property because they have not been shown to be both recoverable and fully mitigated (id. at 22-23). This $50 million in costs includes the following: (1) $800,000 in costs for the LaGrange Street property; (2) $15 million in capital additions related to Pilgrim that have not been shown to be prudently incurred; (3) $5 million of estimated transaction costs related to the Pilgrim divestiture; and (4) $26 million of estimated refinancing costs (id. at 23). The Attorney General argues that the Agencies "have not reviewed, much less offered any opinion on the costs" that Boston Edison estimates it will incur to refinance existing securities, and thus argues that there is no evidence that these estimates are reasonable (Attorney General Reply Brief at 8-9).

The Attorney General acknowledges that even though the Company has not yet shown that these costs are recoverable and fully mitigated, ultimately more than half of these contested or unknown costs will be found to be appropriately included in transition property for the purposes of securitization (Attorney General Brief at 23). The Attorney General does not wish to forego cost savings that result from securitization (id.). Therefore, the Attorney General recommends that the Department approve all but $20 million of the amounts Boston Edison proposes to securitize, but further recommends that the Department not specify which costs make up the $20 million (id.). According to the Attorney General, as long as the amount approved by the Department does not exceed the amount that will ultimately be found to be securitizable, his recommendation is consistent with the Restructuring Act (id. at 23-24). The Attorney General states that the Department can defer the specification of which costs are included in the transition

property for securitization until after the closing date when any reconciliation and other necessary proceedings take place (id. at 24).

2. Agencies

The Agencies do not make a recommendation on the size of the RTC amounts (Agencies Reply Brief at 3). However, the Agencies recommend that the Department "make clear that any limitation relates to the transition costs to be securitized and not to credit enhancement or costs of issuance to be funded with bond proceeds" (id. at 3).

3. Boston Edison

Boston Edison agrees with the Attorney General's argument that only costs that have been shown to be both recoverable and fully mitigated can be securitized (Boston Edison Reply Brief at 19). However, Boston Edison argues that it proposes to securitize only those transition costs that have been determined by the Department to be reimbursable transition costs (id.).

Boston Edison argues that all the costs objected to by the Attorney General are indeed reimbursable transition costs, with the exception of the LaGrange Street Property (id.). Boston Edison asserts that refinancing costs are not transition costs that need to be mitigated (id.). Boston Edison states that the Restructuring Act permits recovery of refinancing costs as transition property (id. at 20, citing G.L. c. 164, § 1H(a)). Furthermore, Boston Edison maintains that the recovery of call premiums is provided for in the Settlement Agreement (id. at 20).

Boston Edison claims that any imposition of a cap on the securitizable amount will unnecessarily deprive ratepayers of savings that can be achieved by securitizing at an interest rate lower than the 10.88 percent carrying charge rate (id. at 21). Boston Edison asserts that the higher the principal amount of the RRBs, the greater the savings to ratepayers (id.).

Boston Edison argues that the Attorney General's method of setting a cap is "imprecise to the point of being arbitrary" (id.). Boston Edison states that if the Department ultimately determines in D.T.E. 99-16 that the L'Energia buyout costs can be included in the transition charge, then the amount Boston Edison proposes to securitize would exceed the cap recommended by the Attorney General and would deprive ratepayers of additional savings (id. at 21-22).

In addition, Boston Edison argues that the proposed cap would not accommodate any additional credit enhancement required by the rating organizations in order to obtain the highest rating for the RRBs (id. at 22). While Boston Edison does not anticipate that the rating organizations will require additional credit enhancement, it cannot precisely predict the magnitude of these costs if further enhancement is required. Boston Edison

states that certain forms of credit enhancement could increase the principal amount of the RRBs substantially (id. at 22).

C. Analysis and Findings

Because the bonds issued pursuant to this order will be without recourse to the credit of Boston Edison or any assets of Boston Edison, and will constitute irrevocable obligations of the ratepayers of Boston Edison, the Department must scrutinize all amounts that will be included in the securitization total to ensure that only those costs that have been shown to be both recoverable and mitigated are securitized. The Attorney General identifies approximately $50 million in costs that he argues have not been shown to be both recoverable and mitigated. The components of this $50 million include capital additions, transaction costs related to the divestiture transaction, and refinancing costs.

The Attorney General opposes the inclusion of certain capital addition costs related to Pilgrim, arguing that they have not been shown to be prudently incurred. In D.T.E. 98–119/126, at 62-64, the Department allowed the capital additions questioned by the Attorney General. Therefore, consistent with the earlier finding in D.T.E. 98-119/126, at 62-64, the Department finds these costs are recoverable, and can be included in the transition costs to be securitized.

The Attorney General objects to the inclusion of the transaction costs related to the Pilgrim divestiture because they are estimates. Although the transaction costs in question are estimated, Boston Edison will update the estimates based on the actual closing statements, and, therefore, the Department expects that the transaction costs for the divestiture transaction that Boston Edison includes in the securitization amount will more closely approximate the actual amounts. Furthermore, in D.T.E. 98–119/126, the Department directed Boston Edison to file the actual transaction costs, which will then be reconciled in the next transition charge reconciliation proceeding. Therefore, the Department approves the inclusion of the transaction costs estimates in the securitization amount, but directs Boston Edison to use the most current estimates available for these costs at the time of securitization.

The refinancing costs, which Boston Edison estimates to be about $26 million, constitute the largest component of the $50 million of costs that the Attorney General objects to being included in the securitization amount. The Attorney General argues that these costs are estimates and that there is no evidence that these estimates are reasonable (Attorney General Reply Brief at 8-9). The Act allows the inclusion of refinancing costs in the transition property. G.L. c. 164, § 1H(a). In addition, the Settlement Agreement contemplated the inclusion of refinancing costs in the transition property, as it requires that net savings from securitization be calculated using all transaction costs including refinancing costs. Settlement Agreement at Att. 3 § 1.7(a). Because refinancing will occur after securitization, the amount included for refinancing costs in the securitization amount must necessarily be an estimate.

Regarding the Attorney General's argument about the reasonableness of the estimate for the refinancing costs, the Department acknowledges that while the Agencies will approve most of the other transaction costs of the securitization, they will not monitor the refinancing costs. Because the refinancing costs form the largest component of the transaction costs, it is particularly important that the Department ensure that the refinancing costs ultimately paid by ratepayers are reasonable.

Because the Restructuring Act permits recovery of refinancing costs as Transition Property, the Department will allow Boston Edison to securitize the refinancing costs associated with the securitization. However, the Department will review the reasonableness of these costs in Boston Edison's next transition charge reconciliation proceeding, and may, at that time, disallow the recovery of any costs that are found to be unreasonable. Furthermore, if Boston Edison's actual refinancing costs are lower than the securitized amount, the Department directs Boston Edison to return to ratepayers any amounts in excess of its actual costs. Any such disallowance or return to ratepayers of an overcollection will be carried out through a RVC established at the Company's next transition charge reconciliation proceeding.

Regarding the Attorney General's recommendation for the imposition of a cap, the Department notes that the imposition of an arbitrary cap on the amounts to be securitized would prohibit Boston Edison from securitizing other costs, such as the L'Energia buyout costs, if the Department approves the inclusion of those costs as a transition charge. In addition, the imposition of a cap might prevent Boston Edison from meeting any additional credit enhancement requirements that the rating organizations may impose.

Although we will not impose a cap on the total amounts to be securitized, the Department will specify which costs Boston Edison may securitize. Boston Edison may include any amount from the L'Energia buyout in the amounts to be securitized only if and when such amounts are approved by the Department as transition costs in D.T.E. 99-16. Further, Boston Edison may securitize amounts associated with the General Electric materials contract or other costs not approved in the Divestiture Order only upon a finding by the Department that such costs are a) reasonable and necessary costs incurred in order to finalize the Pilgrim divestiture transaction, and b) qualify as transition costs. See D.T.E. 98-119/126, at 67-69.

Based on the foregoing analysis and findings, the Department will allow Boston Edison to securitize the following costs: (1) costs representing the fixed component of the transition charge, which include the net balance of the unrecovered plant balances for Pilgrim and related regulatory assets and the unrecovered prefunded balance of Boston Edison's portion of the decommissioning fund being transferred to Entergy, and the municipal contract customers' portion of such balances, less the investment in the LaGrange Street property; (2) the transaction costs of approximately $35 million for issuing RRBs, providing any credit enhancement, and including refinancing costs; (3) the costs of the buyout of the L'Energia contract to the extent these costs are approved

as transition costs in D.T.E. 99–16; and (4) the costs associated with the General Electric materials contracts, or other costs necessary to finalize the divestiture transaction, to the extent they are approved by the Department as transition costs. See D.T.E. 98-119/126 at 67-69.

V. PROPOSED FINANCING ORDER

As discussed above, Boston Edison, in consultation with the Agencies, submitted a proposed financing order for the Department's consideration with its petition and a revised proposed financing order with its initial brief (Exh. BE-1; Boston Edison Brief, App. 1). The Department has reviewed the proposed financing order as modified by the recommended revisions. The revisions resulted from discussions with certain rating agencies as well as input from underwriters' bankruptcy and bond counsel. In addition, the Department has incorporated Boston Edison's recommendation to add a provision to the Financing Order (See Appendix 1, ¶ 45) to protect the RTC revenue stream if Boston Edison, as the initial servicer, seeks to resign voluntarily as the servicer (Exh. BE-2 at 12). The revisions do not change the structure or nature of the original application. The following is a summary of changes in the proposed financing order:

1. Revised the amount to be securitized including potential adjustments, ¶ 3, 56, 59;
2. Revised for clarification of RTC charges and Boston Edison's capitalization of each SPE, ¶ 3, 22;
3. Revised for inclusion of costs associated with the L'Energia PPA buyout and a reference to its separate proceeding, ¶ 4, 56;
4. Revised for clarification of the collection of RTC charges from all classes of retail users, ¶ 5;
5. Revised for clarification of credit enhancement, ¶ 11, 16, 41;
6. Revised for clarification of contingent indemnity obligations, ¶ 4, 5, 8;
7. Revised to reflect proper use of the terms "Transition Property" and "Reimbursable Transition Costs,"¶ 17, 60;
8. Revised for clarification of accounting of amounts in the reserve account to be credited to ratepayers, ¶62;
9. Revised to add that synthetic floating rate bonds will not be issued unless it will result in a lower net interest cost on the RRBs, ¶ 64.

The Agencies contend that the proposed financing order meets the legal requirements to issue the RRBs (Exh. BE-15, at 2). In addition, the Agencies state that the proposed financing order incorporates the requisite provisions necessary to achieve the highest possible credit rating and thus the lowest possible interest rate for the RRBs (Agencies Brief at 4). The Agencies are not aware of any provision in the proposed financing order, as revised, "beyond that required for the necessary legal opinions or which exceeds the requirements of the rating organizations in prior RRB transactions" (RR-DTE-29). Certain issues regarding the provisions contained in the proposed financing order were raised during the proceeding and are discussed below.

The Department has included an attachment (Appendix 1) to this order which incorporates the Department's findings herein. Appendix 1, which is part of the Department's financing order, contains additional terms for the issuance of bonds, which we adopt here today. Appendix 1 also includes reporting forms (Appendix A, Attachments 1-4, and Appendix B) which shall be filed by the Agencies with the Department upon bond issuance. In the following sections, the Department reviews and analyzes the following provisions in the proposed financing order: (1) standards governing TPS; (2) a statement regarding reimbursable transition costs on customers' bills; (3) Ancillary Agreements and (4) adjustments to the RTC charge. Pursuant to such review, the Department approves the proposed financing order attached hereto as Appendix 1.

A. Standards Governing Third Party Suppliers

1. Introduction

Boston Edison defines a TPS as an entity that will provide electric generation service to a customer and that could bill and collect from a customer (1) all charges for transmission, distribution and transition charges, including the RTC, (2) transmission and distribution charges, but not transition charges, or (3) no charges, as Boston Edison would bill and collect all charges directly from the customer even though a customer has chosen a TPS as its electric supplier (Tr. 4, at 509). The standards governing the TPS collection and remittance procedures are viewed by rating organizations as major criteria in evaluating the creditworthiness of the RRBs (Exh. BE-2, at 4). Therefore, both Boston Edison and the Agencies strongly recommend that the Department include specific standards in the financing order to govern TPS collection and remittance procedures.

Boston Edison included the following standards governing TPS collection and remittance procedures in the proposed financing order: (1) a TPS will remit reimbursable transition costs charges, regardless of whether payments are received from end users, within 15 days of Boston Edison's, or any successor servicer's, bill for such charges; (2) a TPS will provide Boston Edison, or any successor servicer, with total monthly KWH usage information, as such information serves as the basis of RTC remittance; (3) Boston Edison, or any successor servicer, will be entitled, within seven days after default by a TPS in remitting RTC charges billed, to assume responsibility for billing all charges for services provided, or to switch responsibility to a third party; and (4) if a TPS does not maintain at least a "BBB" long term unsecured credit rating, such TPS shall maintain, with the servicer, a cash deposit or comparable security equal to one month's maximum estimated collection of RTC charges, as agreed upon by Boston Edison, or any successor servicer, and the TPS (Exh. BE-1, at 52).

2. Positions of the Parties

a. Attorney General

The Attorney General initially argued that the Department should not approve policies or procedures regarding TPS billing, collection and remittance procedures as they have not been reviewed by interested parties, or the Department (Attorney General Brief at 25). In addition, the Attorney General asserted that the Department should not delegate to any private entity its authority over terms and conditions relative to third party billing (id. at 25). The Attorney General acknowledged that the legislative scheme does not contemplate that the Department approve TPS procedures, and that the Agencies will have final approval over such procedures for purposes of securitization (Attorney General Reply Brief at 9).

b. The Agencies

The Agencies argue that to obtain the highest possible bond rating, a financing order must establish (1) stringent credit requirements to reduce risk of TPS insolvency, (2) provisions to permit swift assumption of billing and collection responsibilities by the servicer if the TPS fails to perform its duties, and (3) requirements for sufficient information to be provided to the servicer by the TPS to enable the servicer to calculate necessary adjustments to the RTC charge and to perform other relevant functions (Agencies Brief at 9). In addition, the Agencies claim that at least one rating organization has publicly stated that minimum standards for TPS billing should be imposed in a financing order if a TPS is contemplated in a state's restructuring statute (DTE-RR-20; Agencies Brief at 9). The Agencies argue that the establishment of standards for TPS in documents other than the proposed financing order would be an insufficient alternative because only a financing order incorporates standards of finality and incontestability (Agencies Brief at 9). The Agencies contend that failure to include TPS billing standards in the proposed financing order would likely result in a lower rating or require greater credit enhancement to compensate for any potential TPS deficiencies (id. at 8). Based on TPS standards in other states in which the highest ratings were obtained for similar bonds, the Agencies argue that the TPS standards included in the proposed financing order are necessary as they include the minimum requirements sufficient to achieve the highest ratings for the RRBs (id. at 8-9).

c. Boston Edison

Boston Edison maintains that rating organizations view TPS standards as major criteria in evaluating the creditworthiness of the RRBs (Boston Edison Brief at 108). To achieve the highest possible credit rating and thereby maximize the benefit to ratepayers, Boston Edison argues that the proposed financing order requires a TPS to comply with specified billing, collection and remittance procedures and credit requirements for the collection of RTC charges (Boston Edison Brief at 108). Boston Edison contends that the approval of these TPS standards is appropriate as the standards are designed to reduce risks of delays or non-payment of RTC charges and the costs of TPS default, which would ultimately be passed on to ratepayers (Exh. BE-1, at 52, ¶ 39, 40; Boston Edison Brief at 108).

3. Analysis and Findings

The record contains sufficient evidence to show that billing, collection, remittance provisions, and creditworthiness criteria may affect the RRB credit rating and that TPS provisions are critical to the way credit rating organizations view the securities (DTE-RR-19; Tr. 4, at 509-513). Billing, collection and remittance of RTC charges by a TPS may increase the risk of shortfalls in the RTC charge collections by exposing the cash flow to potential interruption due to the default, bankruptcy or insolvency of the TPS. The risk of interruption increases risks to investors, potentially reducing the credit rating and increasing the rate of interest on the RRBs. The Department recognizes that the absence of TPS standards would reduce savings from securitization by diminishing the creditworthiness of the RRBs. Lack of standards would disadvantage ratepayers as the savings from securitization may be diminished. Accordingly, the Department finds that the proposed standards governing TPS in this instance should be included in the financing order.

B. Statement Regarding Reimbursable Transition Costs on Customers' Bills

1. Introduction

Boston Edison initially proposed to include on each customer's bill, a statement that the "…RTC charge as a component of the transition charge is being collected on behalf of an SPE, as owner of the transition property" (Exh. BE-1, at 54). Boston Edison revised its proposal so that the bill statement would read "a portion of [the transition charge] has been sold to the SPE" (Boston Edison Brief at 79).

2. Positions of the Parties

a. The Agencies

The Agencies argue that a statement regarding the RTC charge is needed on each customer's bill in order for a "true sale" opinion of the transition property. Absent such a statement, the Agencies argue that the credit risk of the transaction as perceived by rating organizations would be adversely affected (Agencies Brief at 11). Furthermore, the Agencies assert that in the event of a bankruptcy, a court will consider whether steps were taken to assure that creditors were not misled as to the separate existence of the company and the SPE with respect to the transition property (RR-DTE-22). The Agencies argue that an RTC statement, as part of the tariff filing alone and not on a customer's bill, is insufficient to render a "true sale" opinion because it is unlikely that it would be seen by creditors of Boston Edison (id.).

b. Boston Edison

Boston Edison argues that a bill statement regarding the RTC charge is necessary for bankruptcy counsel to render a true sale opinion of the transition property (Tr. 4, at 529-533). Boston Edison maintains that it is necessary to highlight publicly that the RTC charges are not owned by Boston Edison, but are instead the property of the SPE (Boston Edison Brief at 79, n.94). Boston Edison argues that the proposed wording appearing in a footnote to the existing transition charge line item is the least obtrusive method to identify the ownership interest of the SPE (Boston Edison Reply Brief at 79).

3. Analysis and Findings

The evidentiary record, which was uncontradicted, shows that the notation on each customer's bill of the SPE's interest in the transition property is necessary to achieve the highest possible credit rating of the bonds. When reviewing proposed wording for inclusion as a statement on customer bills, the Department seeks to minimize any potential customer confusion. Boston Edison has revised the proposed wording in response to the Department's concern about clarity. However, the Department finds the original wording to be more understandable. Therefore, the Department directs the Company to include the following statement in a footnote on customers' bills: "The reimbursable transition cost ("RTC") charge as a component of the transition charge is being collected on behalf of a special purpose entity ("SPE"), as the owner of the transition property."

C. Ancillary Agreements

1. Boston Edison's Proposal

Boston Edison seeks Department approval to enter into a Servicing Agreement, an Administration Agreement and other RRB Transaction documents with one or more SPEs (collectively "Ancillary Agreements") (Exh. BE-1, at 58). While Boston Edison has provided drafts of these documents, it states that the documents cannot be finalized until after the Department approves the proposed financing order (Tr. 5, at 635-636).

2. Positions of the Parties

a. Attorney General

The Attorney General advocates that the Department include language in the proposed financing order requiring that the terms of any Ancillary Agreement shall be consistent with the financing order and terms of the Restructuring Act (Attorney General Reply Brief at 9). The Attorney General argues, however, that the Act does not contemplate that the Department will approve such ancillary documents and therefore Boston Edison is incorrectly seeking Department approval of such Ancillary Agreements (Attorney General Reply Brief at 9, n.3, citing Exh. BE-1, ¶ 61).

b. Boston Edison

Boston Edison states that it seeks Department approval of the proposed financing order and its ability to enter into the proposed various agreements, but that it is not seeking Department approval of the agreements themselves (Boston Edison Reply Brief at 26, n.22, citing Exh. BE-1, ¶ 61).

3. Analysis and Findings

The Restructuring Act provides that if a company securitizes its transition costs, the Department shall require an electric company to contract with a financing entity (the SPE in this case) to collect the RTC charges, and that any contract with the SPE "shall not impair or negate the characterization of the sale, assignment or pledge as an absolute transfer, a true sale, or security interest, as applicable" G.L. c. 164, § 1H(c)(3). The Act does not require Department approval of such contracts, only that the Department require such contracts and ensure such contracts do not change the nature of the proposed financing order.

The Agencies will approve the final Ancillary Agreements after review of the financing order and all Ancillary Agreements by the rating organizations, the Internal Revenue Service and the Securities and Exchange Commission (Tr. 4, at 505; Agencies Brief at 11). The proposed financing order does not ensure that the Ancillary Agreements comply with the proposed financing order and are consistent with the Act. Accordingly, the Department adds the following language to the financing order at ¶ 62: "Such Agreements and RRB Transaction documents shall comply with this financing order and the Act and shall not impair or negate the characterization of the sale, assignment or pledge as an absolute transfer, a true sale, or security interest, as applicable."

Consistent with the Act, the Department approves the ability of Boston Edison to enter into a Servicing Agreement. The Department need not approve the actual Ancillary Agreements, except to direct that such agreements shall be consistent with the financing order and the Act.

D. Adjustments to the RTC Charge

1. Introduction

Boston Edison proposes to periodically adjust the RTC charge to ensure that it remains sufficient to generate an amount equal to the sum of the periodic RRB payment requirements for the upcoming year (Boston Edison Brief at 12). Further, in the proposed financing order, Boston Edison includes a requirement that in no event shall the RTC charge exceed the transition charge, as approved by the Department pursuant to the Settlement Agreement, and as may be in effect from time to time (Exh. BE-1, at 56).

2. Positions of the Parties

a. Agencies

The Agencies state that they must be able to represent to the rating organizations and investors that more stringent limits on the RTC Charge adjustment mechanism will not be imposed after the time of pricing the RRBs (Agencies Reply Brief at 5). The Agencies contend that without such assurance, the value of the true-up mechanism, which is an essential basis for the highest bond rating for the RRBs, will be in doubt (Agencies Reply Brief at 5). Therefore, the Agencies propose in their Reply Brief the following revision to the wording of the section of the financing order that deals with the relationship between the RTC charge and the transition charge:

> In no event shall the RTC Charge exceed the transition charge from time to time in effect as approved by the Department in accordance with the Settlement Agreement's methodology and as may be revised by this Financing Order, the Pilgrim Order, or in an order arising from a Separate Proceeding (Agencies Reply Brief at 5).

On March 29, 1999, the Agencies filed a Motion for Leave to Make Supplemental Filing and a Supplemental Filing. The Supplemental Filing includes proposed additions to the financing order to address "circumstances where the RTC Charge, which is a component of the transition charge, would exceed the then current transition charge until an adjustment of the transition charge is made" (Supplemental Filing at 2). The Agencies offer two alternative mechanisms to apply in the above described circumstances. The first alternative would provide that the statutory rate reduction cap would be increased to permit an RTC charge adjustment (id. at 3-4). The second alternative would not affect the statutory rate reduction cap, but would provide that the Company would defer collection of the increase in the standard offer rate so long as the deferred amount earns a carrying charge of 10.88% (id. at 4-5).

b. Boston Edison

Boston Edison argues that the periodic adjustment mechanism is an important aspect of credit enhancement necessary for the RRBs to receive the highest possible credit rating from the rating organizations (Boston Edison Brief at 82). On March 31, 1999, the Company filed comments in support of the Agencies' Supplemental Filing.

3. Analysis and Findings

The Department recognizes that the RTC charge adjustment mechanism is an essential feature of the proposed securitization. The rating organizations will expect the RTC charge to be sufficient to cover the expected amortization of the principal amount and interest of the RRBs, together with fees and expenses. If the RTC charge initially established is not sufficient to cover these payments, then the rating organizations will expect to see a true-up mechanism that would adjust the RTC charge on a timely basis. Under all circumstances, the Department will ensure that the RTC charge is sufficient

to cover the expected amortization of the principal amount and interest of the RRBs, together with fees and expenses, in order to protect the credit-worthiness of the RRBs. Therefore, the Department will include the Agencies suggested revision for ¶ 55 of the financing order, as modified below.

The Agencies correctly note in their Supplemental Filing that there could be circumstances where changes in other rate components cause the RTC charge to exceed the transition charge. However, the Department cannot approve the Agencies' proposed first alternative to address such circumstances because it may violate the statutory requirements pertaining to rate reductions. Instead, in such circumstances, the Department will adjust other components of the Company's rates. The Department does not approve the Agencies' second alternative because it would be premature to determine here exactly which component of the Company's rates to adjust. As noted, the Department will include the Agencies' suggested revision for ¶ 55 of the financing order, but with modifications that should address the Agencies' concerns expressed in their Supplemental Filing:

> In no event shall the transition charge from time to time in effect as approved by the Department in accordance with the Settlement Agreement's methodology and as may be revised by this Financing Order, the Pilgrim Order, or in an order arising from a Separate Proceeding be adjusted below the RTC. If adjustments to the transition charge to meet the required rate reduction would cause the transition charge to fall below the RTC charge, the Department shall adjust other components of the Company's rates. Conversely, if the RTC charge, as adjusted, would exceed the then current transition charge, the Department also shall adjust other components of the Company's rates.

VI. EXEMPTIONS

A. Exemption from Competitive Bidding Requirements

1. Introduction

Boston Edison requests an exemption from the competitive bidding requirements of G.L. c. 164, § 15 (Exh. BE-1, at 10). Boston Edison states that competitive bidding would not be feasible for a complicated securitization transaction, and it considers a negotiated process to be more cost effective than a competitive bid (Exh. AG-2-17; Tr. 4, at 477). Boston Edison argues that the main advantage of a negotiated process comes from the use of an underwriter (Tr. 4, at 477). Boston Edison also argues that, without an underwriter, the effective cost of the transaction would be higher in light of the complicated securitization transaction (id.). Boston Edison relies on the underwriters' expertise developed through prior securitizations to achieve the lowest all-in financing cost for the securitized bonds and thus produce the greatest possible savings for ratepayers (Exh. AG-2-17; Tr. 4, at 477).

2. Analysis and Findings

An electric or gas company offering long-term bonds or notes with a face amount in excess of $1 million and payable at periods of more than five years after the date thereof must invite purchase proposals through newspaper advertisements. G.L. c. 164, § 15. The Department may grant an exemption from this competitive bidding requirement if the Department finds that an exemption is in the public interest. G.L. c. 164, § 15.

The Department has allowed an exemption from the advertising requirement where there has been a measure of competition in private placement. See, e.g., Western Massachusetts Electric Company, D.P.U. 88-32, at 5 (1988); Eastern Edison Company, D.P.U. 97-76 D.P.U. 88-127, at 11-12 (1988); Berkshire Gas Company, D.P.U. 89-12, at 11 (1989). The Department also has found that it is in the public interest to grant an exemption from the advertising requirement when a measure of flexibility is necessary in order for a company to enter the bond market in a timely manner. See, e.g., Western Massachusetts Electric Company, D.P.U. 88-32, at 5 (1988). However, G.L. c. 164, § 15 requires advertising as the general rule; and waiver cannot be automatic but must be justified whenever requested.

The Department recognizes that this securitization transaction is complicated and that this is the first electric RRB transaction in the Commonwealth. The ability to obtain services at the most competitive prices and from able, experienced entities is limited. Other securitizations will follow both in the Commonwealth and in other states and for now, at least, a negotiated placement is a sufficient substitute for a competitive sale for these securities.

With the flexibility offered by a negotiated process, Boston Edison can take advantage of the knowledge and experience of the underwriters and individuals in the utility asset-backed securities group to achieve the lowest all-in financing cost for the securitized bonds. Use of a negotiated process will produce the greatest possible savings for ratepayers and is therefore in the public interest. Accordingly, the Department allows Boston Edison's request for an exemption from the advertisement and competitive bidding requirements of G.L. c. 164, § 15.

B. Exemption from Par Value Debt Issuance Requirements

1. Introduction

Boston Edison requests an exemption from the par value debt issuance requirements of G.L. 164, § 15(a) (Exh. BE-1, at 10). Boston Edison states that the bonds may be sold to investors at original issue discount, in accordance with normal financial practices relating to market pricing mechanics (Tr. 4, at 480-481).

2. Analysis and Findings

An electric or gas company offering long-term bonds, debentures, notes, or other evidences of indebtedness may not issue these securities at less than par value. The Department may grant an exemption from this par value requirement if the Department finds that an exemption is in the public interest. G.L. c. 164, §15A.

The Department has found that it is in the public interest to grant an exemption from the par value requirement where market conditions make it difficult at times for a company to price a particular issue at par value and simultaneously offer an acceptable coupon rate to prospective buyers. Bay State Gas Company, D.P.U. 91-25, at 10 (1991).

The Department also found that it is in the public interest to authorize the issuance of securities below par value where this technique offers a company enhanced flexibility in entering the market quickly to take advantage of prevailing interest rates, particularly if this benefits the company's ratepayers in the form of lower interest rates and a lower cost of capital (id.). See also, Boston Gas Company, D.P.U. 92-127, at 8 (1992); Boston Edison Company, D.P.U. 91-47, at 12-13 (1991).

The Department finds that the ability to issue debt securities below par value offers Boston Edison increased flexibility in placing its issuances with the prospective investors. We find that this increased flexibility translates into an ability to issue debt securities in a timely manner to take advantage of favorable market conditions. The Department finds that Boston Edison's request for an exemption from G.L. c. 164, § 15A is in the public interest and approves it.

VII. ORDER

Accordingly, after due notice, hearing and consideration, it is hereby

ORDERED: That the issuance of rate reduction bonds by Boston Edison Company to securitize reimbursable transition costs amounts pursuant to this Financing Order and Appendix 1, which contains additional terms for the issuance of bonds, is hereby approved; and it is

FURTHER ORDERED: That the amount which Boston Edison may securitize is comprised of the costs associated with (1) the fixed component of the transition charge (including the net balance of the unrecovered plant balances for Pilgrim and related regulatory assets) and the unrecovered prefunded balance of Boston Edison's portion of the decommissioning fund being transferred to Entergy and the municipal contract customers' portion of such balances, (2) the transaction costs (approximately $35 million) of issuing the RRBs and providing credit enhancement, (3) the L'Energia contract buyout costs to the extent that the Department may later approve these costs for inclusion as transition costs in D.T.E. 99–16, (4) the General Electric materials contract costs to the extent that the Department may later approve these costs for inclusion as transition costs, and (5) other costs necessary to finalize the Pilgrim

divestiture transaction, to the extent that the Department may later approve these costs for inclusion as transition costs; and it is

FURTHER ORDERED: That Boston Edison's request for an exemption from the competitive bidding requirements of G.L. c. 164, § 15 is approved; and it is

FURTHER ORDERED: That Boston Edison's request for an exemption from the par value debt issuance requirements of G.L. c. 164, § 15(a) is approved; and it is

FURTHER ORDERED: That Boston Edison Company comply with all other orders and directives contained herein.

By Order of the Department,

_____

Janet Gail Besser, Chair

_____

James Connelly, Commissioner

_____

Paul B. Vasington, Commissioner

_____

Eugene J. Sullivan, Jr., Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition is filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sed. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).